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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,006	10/10/2001	David P. Aschenbeck	25019A	8542
22889	7590	10/16/2003	EXAMINER	
OWENS CORNING 2790 COLUMBUS ROAD GRANVILLE, OH 43023			WATKINS III, WILLIAM P	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 10/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/975,006

Applicant(s)

ASCHENBECK ET AL.

Examiner

William P. Watkins III

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 1-7, 11-52, 54, 56 and 57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-10, 53 and 55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 7, 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 1772

**DETAILED ACTION**

1. Applicant's election with traverse of group I, claims 1-20 and 53-57 in Paper No. 9, filed 16 July 2003 is acknowledged. The traversal is on the ground(s) that there is no burden on the office. This is not found persuasive because different classification and search of the groups and numerous distinct species cause a burden. Claims 54, 56-57 are to nonelected species and have been withdrawn from consideration.

The requirement is still deemed proper and is therefore made FINAL.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 8-10, 53 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwasaki et al. (U.S. 4,107,375) in

Art Unit: 1772

view of Gehrke et al. (U.S. 6,039,914) or Yap et al. (U.S. 6,037,398).

Iwasaki et al. teach the formation of a roofing material with a nonwoven inner layer saturated with asphalt and a bottom layer of the same asphalt with the top layer of asphalt removed and replaced by blown asphalt or rubberized asphalt, with a surface layer thickness of about .5mm (abstract, col. 2, lines 35-55, col. 1, lines 55-65). Yap et al. teach an SBR modified asphalt with greatly improved weatherability (col. 1, lines 25-30). Gehrke et al. teaches a blown asphalt and filler with greatly improved weatherability. The instant invention claims a roofing material with a top layer of asphalt with greater weatherability than the bottom layer. It would have been obvious to one of ordinary skill in the art to substitute the modified layer of Yap or the blown layer of Gehrke et al. for the top layer of Iwasaki et al. in order to achieve increased weatherability of the exposed surface of the roofing material. Variation in top layer thickness around the ranges taught in the references is taken to be within the ordinary skill of the art. The increased weatherability of the top layers of Gehrke et al. and Yap et al. are taken as passing applicant's specific test, while the bottom layer of Iwasaki et al. is taken as not meeting

Art Unit: 1772

applicant's test based on the teachings of improved weatherability of the substituted asphalts over those used to saturate inner webs. The base reference shows the entire surface being coated.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 8-10 and 53 and 55 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller et al. (WO 00/40794).

The reference teaches an improved weatherability upper layer in a 60 day test (page 18, lines 10-30).

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wombles et al. discloses various blown asphalts.

Art Unit: 1772

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 703-308-2420. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

WW/ww  
October 1, 2003



**WILLIAM P. WATKINS III  
PRIMARY EXAMINER**